

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID LAMIA)	
Claimant)	
VS.)	
)	Docket No. 219,986
SUNFLOWER MANUFACTURING COMPANY, INC.)	
Respondent)	
AND)	
)	
AMERISURE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on April 14, 1997.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction in awarding temporary total disability and medical benefits because claimant failed to establish that he suffered injury arising out of and in the course of his employment and failed to establish that he gave timely notice as required by K.S.A.1996 Supp. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

Claimant testified that he experienced a gradual onset of back problems including pain in his hip down through the knee as a result of his work duties as a gang assembler for respondent, Sunflower Manufacturing Company, Inc. The evidence also suggests that

the work activities continued to aggravate claimant's condition through December 31, 1996. Finally, the evidence establishes generally that claimant's supervisor, Dennis Ritz, was aware of claimant's problem and knew the work was aggravating claimant's back before December 31, 1996, and that claimant told David Lynch, personnel manager, of the injury not later than December 31, 1996.

The Administrative Law Judge notes there are significant inconsistencies in claimant's testimony regarding the date of onset of symptoms. The record also includes testimony, largely by affidavit, that directly contradicts claimant's testimony regarding the cause of his injury. The Administrative Law Judge expressed serious doubts about claimant's version of the events but concluded claimant had met his burden by a preponderance of the credible evidence. The issues before the Board turn largely upon credibility of the claimant and other witnesses. The Administrative Law Judge had the opportunity to observe the testimony of claimant and two other witnesses. The Appeals Board generally defers to the assessment of credibility of witnesses who appear before the Administrative Law Judge. Doing so in this case, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, the Appeals Board finds that the Order of Administrative Law Judge Bruce E. Moore, dated April 14, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Jeffrey S. Austin, Overland Park, KS
Daniel L. Doyle, Overland Park, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director